HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.646 of 2007

Between:

M/s.Mc.Dowell & Co. Ltd

. . .Appellant

AND

The State of Andhra Pradesh, Hyderabad
and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri C.Hanumantha Rao

Counsel for respondent Nos.1 to 4&7 : Government Pleader for Revenue

21st August, 2007

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Per G.S.Singhvi, CJ

This is an appeal for setting aside order dated 29.3.2007 passed by the learned Single Judge in WPMP No.3451 of 2007 in Writ Petition No.2690 of 2007 whereby he rejected the appellant's prayer for restraining the respondents from allotting the surplus land comprised in Town Survey No.1011/1A1, A2 situated at Waltair Uplands, Visakhapatnam.

In the writ petition, which is pending adjudication before the learned Single Judge, the appellant has made the following substantive prayer:

> "For the reasons stated above, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ or order more particularly one in the nature of writ of certiorari for the records in Appeal VSP/87/2004 on the file of respondent and impugned order dt.5.8.2004 in C.C.No.6698 of 1976 on the file of 3rd respondent i.e., the Special Officer and Competent Authority, Urban Land Ceilings, Visakhapatnam and quash the same as illegal, arbitrary, unjust and against provisions of Urban Land Ceiling Act and consequently set aside 8 (4) order, final statement u/s.9, 10 (1), 10 (3), 10 (5) & 10 (6) and all consequential proceedings in C.C.No.6698 of 1976 including allotment of the land in favour of APIIC and further direct the respondents to grant exemption either u/s.21 or under G.O.Ms.No.11 IT & C Dept., dt.21.3.2005 or under G.O.Ms.No.455, dt.29.7.2002 over the petitioner company land of an extent of 4.3101 Hectares, in T.S.No.1011/1A1, A2 situated at Waltair uplands, Visakhapatnam and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
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> It is just and necessary that this Hon'ble Court may be pleased to direct the 1st respondent not to allot or assign the land of the petitioner company to any 3rd party or company or companies

treating it as excess and issue any order or orders in respect of the land of an extent of 4.3101 Hectares, in T.S.No.1011/1A1, A2 situated at Waltair uplands, Visakhapatnam and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The aforementioned prayer of the appellant is founded on the following assertions:

1) that M/s.Hindustan Polymers Limited, which was taken-over by the appellant company pursuant to the orders passed by Bombay High Court in Company Petition No.236 of 1981 and Madras High Court in Company Petition No.43 of 1981, filed an application dated 13.8.1976 under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the 1976 Act') for grant of exemption by claiming that it was intending to undertake some industrial ventures;

2) that vide G.O.Ms.No.1033, Revenue (UC.III) Department, dated 8.10.1992, the State Government granted exemption to an extent of 67.2165 hectares subject to the condition that the work of ABS Project and Styrene and Polystyrene Project should be started within six months and completed by the end of 1994;

3) that M/s.Hindustan Polymers could not fulfill the condition specified in G.O.Ms.No.1033, dated 8.10.1992. Therefore, after issuing show cause notice, the State Government cancelled the exemption;

4) that, in the meanwhile, the State Government vide G.O.Ms.No. 526, dated 21.6.1997, granted permission to the petitioner (the appellant herein) to transfer the land at Vizag to M/s.L.G. Polymers India (P) Limited of L.G. Groups, South Korea;

5) that the petitioner challenged G.O.Ms.No.630, UC-II, dated 26.7.1997 in Writ Petition Nos.23773 of 1998 and 9481 of 1999;

6) that while admitting the writ petitions, this Court suspended G.O.Ms.No.630, dated 26.7.1997 and restrained the respondents from interfering with the property;

7) that Writ Appeal Nos.1282, 1283 and 1284 of 2000 filed by the State Government and Writ Appeal Nos.1576 and 1630 of 2000 filed by the appellant were admitted by the Division Bench and interim direction was given to the government to pass appropriate order keeping in view the order passed in Writ Petition No.23773 of 1998 and batch;

8) that subsequently, the Division Bench allowed the writ appeals preferred by the State Government and dismissed those filed by the appellant;

9) that petitions for Special Leave to Appeal filed against the judgment dated 16.11.2001 was dismissed by the Supreme Court at the admission stage and review petitions filed against that order were also dismissed on 3.4.2002;

10) that after dismissal of the petitions for Special Leave to Appeal, the petitioner made an application under Section 21 of the Act and then filed Writ Petition No.11591 of 2004. During the pendency of the writ petition, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam passed order dated 5.8.2004 and dismissed the application. Consequently, the writ petition was also dismissed. However, liberty was given to the appellant to file appeal under Section 33 of the 1976 Act;

11) that Writ Appeal No.1714 of 2004 filed by the petitioner was dismissed by the Division Bench on 3.11.2004 with liberty to avail remedy by filing appeal, and

12) that the appeal, which was registered as Appeal VSP/87/2004, preferred against order dated 5.8.2004 was also dismissed.

According to the appellant, it is entitled to the benefit of exemption in terms of G.O.Ms.No.11, IT & C Department, dated 21.3.2005 and while the writ petition filed by it is pending, the State Government is seeking to alienate the so-called excess land.

In the counter filed on behalf of the respondents it has been averred that the exemption granted to M/s.Hindustan Polymers was withdrawn because of non-fulfillment of the conditions enumerated in the exemption order. Thereafter, the land was reserved for construction of government offices. The respondents have made a reference to various writ petitions and writ appeals instituted by the appellant and averred that after having lost up to the Supreme Court, it filed an application under Section 21, which was rejected by the Special Officer on 5.8.2004; that Writ Petition No.11591 of 2004 and Writ Appeal No.1712 of 2004 were dismissed on the ground of availability of alternative remedy of appeal and that the appeal preferred by the appellant was dismissed on 4.10.2005. For the sake of reference, paragraphs 6 and 7 of the counter-affidavit of Smt.P. Usha Kumari, Special Officer, Urban Land Ceiling, Visakhapatnam are extracted below:

6. The schedule land along with some other lands under Visakhapatnam Urban Agglomeration was placed before the D.L.A.C. on 6.7.1998 for allotting the said land to the Government needy departments. The District Collector & Chairman of the District Level Allotment Committee, Visakhapatnam has resolved to reserve the schedule land measuring Hon'ble Court.4.3101 Sq. Mts. for construction of Government Offices in his proceeding No.657/98/B1, dt.12.7.1998.

Later M/s. McDowell & Co have started agitating against the termination of exemption and taking over of surplus land from M/s.Hindustan Polymers Limited and they have filed the following writ petitions, writ appeals in the Hon’ble High Court of Andhra Pradesh and also filed Special Leave Petitions in the Hon’ble Supreme Court of India.

S.No.	WP/WA/SLP No.	Dated and Result of the WP
	23773/98	The Hon'ble High Court in its common order dt.8.9.2000 disposed the 3 writ petitions in which the W.P.33741/98 was allowed by setting aside the G.O. Ms.No.630, Dt.26.7.1997 and the remaining 2 W.Ps. were closed.
	33741/98	
	9481/99	

Against the disposal of the writ petitions in favour of the writ petitioners, the Government have filed W.A.128/2000 against W.P.9481/99, W.A.1283/2000 against W.P.33741/98, W.A. 1284/ 2000 against W.P.23773/98 and the Hon'ble High Court in its common order 16.11.2001 have allowed the writ appeals of the Government and have set aside the orders passed by the Single Judge dated 8.9.2000 questioned in the writ appeals.

4.	WA No.1576/2001 Against WP No.9481/99	The Division Bench of the Hon'ble High Court in its common order dated 16.11.2001 have dismissed the writ appeals preferred by the appellant company.
5.	WA No.1630/2001 against WP No.23773/98	The SLPs filed by the Company against the orders dated 16.11.2001 of the Division Bench of A P High Court were dismissed by the Hon'ble Supreme Court of India dated 3.4.2002.
	Review Petition (Civil) Nos.288-292/02 in the Supreme Court of India	The review petition of the company to the apex court praying it to review the dismissal orders of the apex court in SLP Nos.22972-22976 were dismissed by the Apex Court on 27.2.2003.

7. It is respectfully submitted that even while the company has agitated its plea in various legal forums as shown above, the Government on the other hand pursuant to the disposal of the writ appeals in favour of the Government, has taken steps to utilize the surplus extent of Hec.4.3101 sq. mts. in T.S.No.1011 part of Waltair Ward, which had vested to Government free from all encumbrances. Since possession of the said surplus extent had been taken over, and the Government in G.O.Ms.No.1356, Revenue (U.C.I) Department, Dt.27.12.2003 have allotted the land in T.S.No.1011 of Waltair Ward to various Government Departments.

The declarant company after having lost its case on withdrawal of exemption by the Government in terms of GO Ms.No.630, dated

26.7.1997 in all legal forums including in the Apex Court as narrated above has chosen to file applications to the special officer and competent authority, ULC, Visakhapatnam seeking exemption U/s. 21 (1) of the Act to retain the surplus extent in TS No.1011 of Waltair Ward for the purpose of construction of dwelling houses to the weaker section employees of the company. While the matter is under active consideration by the Special Officer of the petitioner company has filed WP No.11591/2004 seeking early disposal of the exemption application filed before the Spl. Officer. Even before the Hon'ble High Court disposed the WP the application of the petitioner company was rejected by the Special Officer, ULC on 5.8.2004 stating that the claim was barred by limitation u/s.11 (b) and also outside the purview of ULC Act. Later, the WP 11591/2004 was disposed on 28.9.2004 with a direction to the petitioner to avail the remedy of appeal available u/s.33 of the Act against rejection orders passed by the Special Officer.

Pursuant to the rejection of exemption application U/s.21 (1) of the Act, allotment of the surplus land in TS No.1011 of Waltair Ward to various Government Departments has been reviewed and in pursuance thereof the Government cancelled all the allotment orders issued previously on TS No.1011 of Waltair Ward in GO Ms.No.829/Revenue/UC.I Department, dated 19.10.2004 and have allotted the land to APIIC Ltd., Hyderabad for development of IT Park and the possession of the vacant land was handed over to the APIIC on 20.10.2004. Meanwhile, aggrieved by the dismissal of WP No.11591/2004, petitioner company has filed WA No.1712/2004 and the same was dismissed on 3.11.2004 holding that the petitioner has got statutory remedy of preferring appeal against the order dated 5.8.2004 of the Special Officer ULC.

Accordingly the petitioner company had filed an appeal u/s.33 of the Act before the Commissioner of Appeals, Andhra Pradesh, Hyderabad and while matter was under his examination, the petitioner company has filed another WP No.24474/2004 against the inaction of the appellate authority to dispose of Appeal and the said writ petition was dismissed on 28.12.2004 with a direction to the petitioner company to pursue his remedy with the appellate authority. Again the petitioner company has preferred WA No.279/2005 and it was allowed on 24.2.2005 with a direction to the appellate Authority to take up the appeal and to pass orders on the interim application of the petitioner company.

The petitioner company in an another round of litigation filed WA No.6271/2005 questioning the allotment of land to APIIC when the appeal (1) in question is pending with the Commissioner of Appeals.

The WP was dismissed on 21.3.2005 with a direction to urge the grounds in the appeal petition.

Aggrieved by the directions of the Hon'ble High Court in WP 6271/2005, the petitioner company has again filed WA No.915/2005 and the Hon'ble High Court while discussing the orders and observation made by the Single Judge in W.P.No.6271/2005 about the vexatious litigation perpetuated by the appellant petitioner have concluded that this is clearly a case of abuse of process of law and therefore they dismissed the writ appeal and imposed costs of Rs.25,000/- to be paid within two weeks from today.

Aggrieved by the order dated 27.4.2005 in WA No.915/2005, the petitioner company had filed Review WAMP 2139 of 2005 and the Hon'ble High Court has in its order dated 8.6.2005 has held that viewed from any angle the review petition fails and it is dismissed accordingly.

Meanwhile the petitioner company has filed another writ petition No.10951/2005 against rejection of interim stay sought for by the petitioner company from the Commissioner of Appeals in ULC Appeal No.VSP/87/2004 and the Hon'ble High Court in its interim order dated 17.5.2005 has held that any allotment of the surplus land is subject to the result of appeal u/s.33 of the Act.

Along with the writ petition, the appellant filed WPMP No.3451 of 2007, which was dismissed by the learned Single Judge with an observation that possession of the land was taken as early as on 16.1.1998.

Shri C. Hanumantha Rao, learned counsel for the appellant argued that if the surplus land is allotted to third parties, the appellant will be put to serious injury, inasmuch, as it will have to litigate with the beneficiaries of allotment. He emphasized that once an exemption is granted, the State cannot rely on pre-exemption proceedings even though the benefit of exemption is subsequently withdrawn by the competent authority. Learned counsel submitted that after withdrawal of the exemption, the concerned authorities are duty bound to comply with the procedure contained in Sections 6 and 8 of the 1976 Act afresh and then and then only the excess land can be treated surplus and utilised as such.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Rather, we are convinced that this appeal is part of the strategy adopted by the appellant to somehow or the other frustrate the declaration of surplus area made more than 35 years ago. The series of cases instituted by the appellant speaks volume of its intention to frustrate the implementation of the provisions of the 1976 Act. M/s.Hindustan Polymers, which is a constitute of the appellant, succeeded in getting exemption, but did not comply with the conditions of exemption resulting in withdrawal of exemption and taking over of possession in January, 1998 and for the last more than one decade, the appellant has been litigating by filing one after the other petitions.

Therefore, we do not see any justification to interfere with the discretion exercised by the learned Single Judge not to entertain the appellant's prayer for stay.

There is one more reason for our disinclination to entertain the appellant's prayer. The application filed by it under Section 21 was dismissed on 5.8.2004 and the appeal filed against the order of rejection was dismissed on 4.10.2005. The writ petition was filed by the appellant sometime in the month of March, 2007 i.e. after two years and more than six months of the rejection of its application under Section 21 and one year and five months of the dismissal of appeal. If this unexplained delay is viewed in the backdrop of the fact that possession of the land was taken as early as in January, 1998, it is not possible to entertain the appellant's prayer for restraining the respondents from alienating the surplus land. The elements of balance of convenience and irreparable injury are clearly against the grant of interim relief to the appellant.

In the result, the appeal is dismissed. However, it is made clear

that alienation made hereinafter shall remain subject to the final adjudication of the writ petition.

As a sequel to dismissal of the appeal, WAMP No.1296 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

21st August, 2007

C.V.NAGARJUNA REDDY, J

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